the law, it was ancillary to the administration of justice. The defendant was bound by law to answer all questions put to him by the police officer conducting the investigation and was punishable if he answered untruly and what was said by him had reference to the matter under investigation. Virtually the only distinction between his position and that of an ordinary witness arises from the fact that his statement was not made in a court of justice, and we see no reason accordingly, to use the language of the Lord Chief Baron cited above — that was in the case of *Dawkins* v *Lord Rokeby* (1875) LR HL 744 — why public policy should not equally prevent an action being brought against him as against a witness in an ordinary court of justice.'

I agree with that decision and the reasoning for it.

In the earlier Singapore case of *Rengasamy Chettiar* v *Periasamy*,[3] the Singapore court made reference to the then equivalent section in the Straits Settlements Code to s 113 of the FMS Code. In that case, Whitley J held that a statement made in the course of police investigation was admissible for the purpose only of impeaching the credit of the maker. It has to be noted that the present s 113 of the CPC is a different provision from its equivalent provision in Singapore in 1937 when *Rengasamy Chettiar*[3] was decided or in 1949 when *Martin Rhienus*[2] was decided; it was amended in 1976 by Act A324.

In any event, that point of law decided in *Rengasamy Chettiar*[3] does not seem to arise in the context of the Court of Appeal holding that a statement made in the course of a police investigation is absolutely privileged. In *Martin Rhienus*'s case,[2] Willan CJ said at p 203:

The question was raised by the court whether the provisions of s 113 of the Criminal Procedure Code prevent a statement from being given in evidence at all, even in civil proceedings, but having decided that statements made under s 112 are absolutely privileged it is not necessary for me to decide this further question ...

There being no evidence before the sessions court to show the direction in which the lorry of the defendant was travelling, there was no evidence to show how the accident took place; the plaintiffs had failed to prove that the defendant or his servant was at fault. The judge of the sessions court was right in dismissing the plaintiffs' claims at the close of their case.

The appeal is, therefore, dismissed with costs.

Appeal dismissed.

Solicitors: *Nadarajan & Co; VP Nathan & Partners.*

Reported by *Mathavan Devadas*

Ang Seng Ho v Public Prosecutor

HIGH COURT (JOHORE BAHRU) — CRIMINAL APPEAL NO 41-22-89
JAMES FOONG JC
2 FEBRUARY 1991

Criminal Law — Strict liability — When legislation can be interpreted as creating a strict liability offence — Trade descriptions — Defences — Accused not entitled to rely on defence where no statutory notice given — Trade Descriptions Act 1972, ss 3 & 24

Criminal Law — Statutory offence — False trade description — Statutory defences relate to mens rea of accused person — Whether offence is one of strict liability — Trade Descriptions Act 1972, ss 3 & 24

Trade Marks — Trade descriptions — Accused did not know that goods were imitation — Whether strict liability offence — Defences — Conditions for operation of statutory defences — Trade Descriptions Act 1972, ss 3 & 24

The appellant was charged under s 3 of the Trade Descriptions Act 1972 ('the Act') for offering to supply imitation groundnuts. The appellant claimed that he did not know that the nuts were imitation. The learned magistrate, however, found that the offence was one of strict liability and convicted the appellant.

Held, dismissing the appeal:

(1) The defences made available to an accused under s 24 of the Act relate to knowledge. It must, therefore, be implied that the offence under the Act is one of strict liability.

(2) Where an accused sought to rely on a defence under s 24(1) of the Act, he must first comply with the statutory notice and requirements laid down under s 24(2) of the Act. The whole intention of the statutory notice and requirements is to enable the relevant authorities to trace and track down the real offender.

(3) In order to rely on the defence set out in s 24(3) of the Act, the appellant had to show that he did not know and he could not with reasonable diligence have ascertained that the goods did not conform to the description or that the description had been applied to the goods. The appellant had failed to satisfy these two conditions.

(4) It was not enough for the appellant to merely state that he did not know that the groundnuts were not genuine when supplied. He had to make further enquiries from his immediate suppliers as to whether the groundnuts were genuine.

[Bahasa Malaysia summary

Perayu telah didakwa di bawah s 3 Akta Perihal Dagangan 1972 ('Akta itu') kerana membuat tawaran membekalkan kacang tanah tiruan. Perayu menyatakan bahawa beliau tidak tahu yang kacang itu adalah tiruan. Majistret, walau bagaimanapun, mendapati bahawa kesalahan itu adalah satu yang bersifat liabiliti tegas dan mensabitkan perayu.

Diputuskan, menolak rayuan itu:

(1) Pembelaan yang ada untuk seorang yang didakwa di bawah s 24 Akta itu bersangkut dengan pengetahuan. Jadi adalah tersirat bahawa kesalahan di bawah Akta itu adalah bersifat liabiliti tegas.

(2) Apabila seorang yang didakwa cuba bergantung kepada satu pembelaan di bawah s 24(1) Akta itu, beliau

terlebih dahulu mesti mematuhi notis statutori dan kehendak yang diperuntukkan oleh s 24(2) Akta itu. Keseluruhan niat notis statutori dan kehendak itu bertujuan membolehkan pihak berkuasa yang berkenaan untuk mencari dan memburu pesalah yang sebenar.

(3) Supaya boleh bergantung kepada pembelaan yang terkandung dalam s 24(3) Akta itu, perayu mesti menunjukkan bahawa beliau tidak tahu dan beliau tidak boleh dengan ketekunan yang munasabah menentukan bahawa barang itu tidak memenuhi perihal itu atau bahawa perihal itu terpakai kepada barang itu. Perayu telah gagal memuaskan kedua-dua syarat itu.

(4) Adalah tidak mencukupi untuk perayu menyatakan semata-mata bahawa beliau tidak tahu bahawa kacang tanah itu tidak sejati apabila dibekalkan. Beliau mesti membuat pertanyaan lanjut kepada pembekal terusnya (immediate supplier) sama ada kacang tanah itu sejati.]

Cases referred to

1 *Cottee* v *Douglas Seaton (Used Cars) Ltd* [1972] 3 All ER 750 (not folld)
2 *Code* v *Barnes* [1974] 1 WLR 544 (folld)
3 *Macnab* v *Alexanders of Greenock* [1972] Crim LR 256; 1971 SLT 121 (refd)

Legislation referred to

Trade Descriptions Act 1972 ss 3, 24

R Muthu for the appellant.
Seah Hock Thean (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

James Foong JC: This is an appeal against the decision of the learned magistrate in Pontian, Johore, which found the appellant guilty of an offence that reads as follows:

> That you on 30 January 1981 at about 12 noon at shop styled Chop Lam Hong of 47-A, Jalan Balek, in the District of Pontian, in the State of Johore, in the course of your business did offer to supply to wit 230 packets of groundnuts to which a false trade description, namely, 'Thumb Brand Ngan Yin Groundnut Factory' were applied, whereas in actual fact, the said groundnuts were not the 'Thumb Brand Ngan Yin Groundnut Factory' manufactured and packed by Ngan Yin Groundnut Factory Sdn Bhd of Lot 19 & 20, Mambang Diawan, Kampar, Perak and that you have thereby committed an offence under s 3(1)(b) of the Trade Descriptions Act 1972 and punishable under s 18 of the same Act.

The facts of this case are these. On 30 January 1981, enforcement officers from the Ministry of Trade raided the appellant's shop at No 47A, Jalan Balek, Pontian by the name of Chop Lam Hong. Found therein were altogether 250 packets of groundnuts some of which were on display. The groundnuts bear the brand name of 'Thumb Brand Ngan Yin Groundnut Factory' which were proved to be an imitation of those from the company that produced and sold them under such brand name.

The appellant contended that he had no knowledge that the groundnuts were imitation since he purchased them from a shop up the road by the name of Chai Hong Seng in Pontian.

Investigations proceeded and it was discovered that Chai Hong Seng in Pontian purchased the said goods from Hock Seng Malaysia Trading Sdn Bhd in Malacca.

Further investigations revealed that Hong Seng Malaysia Trading Sdn Bhd in Malacca purchased the goods from Aik Lee Heng Trading.

Finally, it was discovered that Aik Lee Heng Trading purchased the goods from Hiap An Trading, Johore Bahru which firm was found to be not in existence any longer.

The learned magistrate in his grounds of judgment found, inter alia, that the offence as charged is one of strict liability and that the appellant had not satisfied the court that he could not with reasonable diligence have ascertained that the goods did not conform to the description or that the description had been applied to the goods.

In this appeal, learned counsel for the appellant argued that the learned magistrate had erred in deciding that the said offence is one of strict liability and, had drawn adverse inference against the appellant in determining his guilt in this offence. To support his contention, learned counsel tendered the case of *Cottee* v *Douglas Seaton (Used Cars) Ltd*,[1] where it was held by the Queen's Bench Division of the English High Court that the offence similar to that the appellant was charged is one that requires an element of knowledge to be proved by the prosecution.

Section 3(1)(b) of the Malaysian Trade Descriptions Act 1972 ('the Act') reads as follows:

> Any person who, in the course of a trade or business supplies or offers to supply any goods to which a false trade description is applied is guilty of an offence.

However, under subsequent provisions of the Act, defences are made available to an accused person.

Section 24(1) of the Act allows the defence of mistake or the reliance on information supplied to the accused person or the act or default of another person or an accident or some other cause beyond the accused's control.

Section 24(3) of the Act provides further defences to allow the accused person 'to prove that he did not know and could not with reasonable diligence have ascertained, that the goods did not conform to the description or that the description had been applied to the goods'.

The defences so offered relate to knowledge and the mental state or mens rea of an accused person. Why are

such defences that relate to the mental state of the accused person raised if, as in the normal circumstances, the prosecution would have to prove guilty knowledge in the first place? As these defences are clearly and expressly provided for under the Act, it must be implied that the offence under the Act is that of strict liability. If Parliament had intended otherwise, then there is no necessity for these defences to be stated, since the prosecution would be required to prove knowledge of the accused when the offence was committed.

Again under s 24(1)(a) and s 24(3) of the Act, the word used therein 'is for the person charged to prove' the relevant stated defences. This again implies that the offences under the Act is one of strict liability. It is for the accused person to prove his mental state at the time of the offence in order to avail himself of one of the defences.

This court adopts the view of Lord Widgery CJ in *Code* v *Barnes*[2] at p 547 when he asserted that:

> ... but the fact that Parliament provides such a defence for the people who are innocent in the sense of not being culpable for what is done under s 1 shows, in my judgment, if any doubt lay, that it is not right to import an element of mens rea into it.

The case of *Code* v *Barnes*[2] aforesaid was based on a charge under the Trade Descriptions Act 1968 of England and the provisions therein are almost identical in wording to our Trade Descriptions Act 1972 except for the numbering of the sections.

This court does not agree with the decision of *Cottee* v *Douglas Seaton (Used Cars) Ltd,*[1] as the said court had not addressed its mind to the defences available. Obviously, the same court in the case of *Code* v *Barnes,*[2] which was decided a few years later, has changed its mind to decide that such an offence is that of strict liability. Again such views were adopted in the Scottish case of *Macnab* v *Alexanders of Greenock.*[3]

The appellant attempted to utilize the defences under s 24(1) of the Act by alleging that it was due to the act or default of another person, or he relied on information supplied by another person.

This court finds that the learned magistrate had rightly refused to allow such defences when statutory notice and requirements laid down under s 24(2) of the Act had not been followed.

The whole intention of the statutory notice and requirements is to enable the relevant authorities to trace and to track down the real offender. In order to do so, relevant information must be supplied by the accused person within the stipulated time. As the appellant failed and/or neglected to comply with the said statutory procedures and had not obtained the leave of court to do otherwise, the defences under s 24(2) of the Act are not available to him.

The appellant also attempted to utilize the defences provided for under s 24(3) of the Act. Section 24(3) has no prior statutory requirement before it can be used. However, there are two conditions which an accused person must prove, namely:

(1) he did not know, and
(2) he could not with reasonable diligence have ascertained that the goods did not conform to the description or that the description had been applied to the goods.

This court finds that the learned magistrate had not erred in deciding that the appellant had not satisfied the aforesaid two conditions. This court wishes to add that, it is not sufficient for the appellant to merely state that he did not know that the groundnuts were not genuine when he requested his supplier to supply genuine ones. The appellant must proceed further to enquire from his immediate suppliers as to whether the groundnuts were genuine at the time of taking delivery. There must be some further steps or enquiries. What steps or enquiries that are considered reasonable must depend on the circumstances of each case. As regards this case, on the circumstances as shown from the notes of evidence, the appellant had failed to take such steps or make further enquiries as to whether the goods did conform to the description or that the description had been applied to the goods.

For the reasons as stated aforesaid, this court dismissed this appeal.

Appeal dismissed.

Solicitors: *Muthu & Co.*

Reported by *Mathavan Devadas*